

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

SPECIAL BENCH (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI—MEMBER TECHNICAL  
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 09.09.2020 AT 10.30 AM**

|                                  |                                                |
|----------------------------------|------------------------------------------------|
| TRANSFER PETITION NO.            |                                                |
| COMPANY PETITION/APPLICATION NO. | IA No. 698/2020 in CP (IB) No. 601/10/HDB/2018 |
| NAME OF THE COMPANY              | RCM Infrastructure Ltd                         |
| NAME OF THE PETITIONER(S)        | RCM Infrastructure Ltd                         |
| NAME OF THE RESPONDENT(S)        |                                                |
| UNDER SECTION                    | 10 of IBC                                      |

**Counsel for Petitioner(s):**

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
|                        |             |                        |           |
|                        |             |                        |           |

**Counsel for Respondent(s):**

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
|                        |             |                        |           |
|                        |             |                        |           |

**ORDER**

IA No.698/2020, is listed today for passing orders.

RP is connected through Video conference.

Orders passed vide separate orders.

  
Member (Technical)

  
Member (Judicial)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No. 698/2020  
IN

CP (IB) 601/10/HDB/2018  
U/S. 12 and 60(5) of the I&B Code, 2016  
R/w Rule 11 of NCLT, Rules, 2016.

**IN THE MATTER OF**

**RCM INFRASTRUCTURE LIMITED**

Shri J.MANIVANNA  
Resolution professional for RCM INFRASTRUCTURE LIMITED  
Plot No.53B, 8/330, Vishalakshi Nagar,  
Fourth Cross Street,  
Santhosapuram,  
Chennai-600 073, India.

**Order pronounced on 09.09.2020**

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Veera Brahma Rao Arekapudi, Member(Technical)

**Counsels / parties present:**

For the Applicant:

Mr.Manivannan, RP.

**Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)**

Heard on 04.09.2020

**ORDER**

1. This Interlocutory application bearing IA.No. 698/2020 is filed by the Resolution Professional under section 12 and 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016 seeking extension of 30



days for completion of Corporate Insolvency Resolution Process of Corporate debtor.

2. Averments in brief in the Application:

- a. CIRP started against corporate debtor on 03.01.2019 and appointed Mr.Manivannan as IRP and continued him as Resolution Professional after due approval of COC at its first meeting held on 08.02.2019.
- b. It is averred that RP sought the extension of initial CIRP period of 180 days by another 90 days, and the same was considered by the Tribunal by its order dated 19.07.2019 by extending the CIRP period by another 90 days from 03.07.2019. In terms of the said order the CIRP should have been completed within 270 days i.e on or before 01.10.2019.
- c. It is averred that only one Expression of Interest was received from existing promoter of the Company and the same has been rejected by the Resolution professional. Aggrieved by the decision of the RP, the promoters filed an Application i.e IA No.833/2019. Considering the IA No.833/2019, the Tribunal vide order dated 06.01.2020 directed the RP to consider the resolution plan submitted by the promoter in accordance with the provisions of IBC, 2016 and in view of the amended provisions of Section 12 of the Code.
- d. It is averred that in compliance with the order dated 06.01.2020, the promoters have submitted their binding resolution plan on 18.01.2020 and the same has been placed before the COC in the meeting held on 23.01.2020 for its consideration. The COC thus requested Resolution Applicant to enhance the Resolution Plan value, so that they can consider the plan. However, one of the COC member namely Indian



Overseas Bank expressed that they are not in position to consider the plan unless and until the IA NO.832/2019 is disposed of by the Tribunal wherein the promoters challenged the realization of mortgaged property by IOB during the moratorium. After due discussion, the Resolution Applicant agreed to submit the revised Resolution Plan. Subsequently the revised resolution plan was submitted on 06.02.2020 i.e the last date of extended period.

- e. It is averred that the revised resolution plan was submitted at the fag end so the RP and COC were unable to complete the process within the extended period. Thus the Applicant filed IA No.157/2020 seeking extension of CIRP period by another 15 days. When the said application is pending, lockdown started due to COVID-19 pandemic.
- f. It is averred that the Tribunal vide order dated 04.08.2020 extended the CIRP period initially from 07.02.2020 to 24.03.2020 and after excluding Covid-19 lockdown from 25.03.2020 to 31.07.2020 and thereafter extended the CIRP from 01.08.2020 to 25.08.2020 and directed the RP to complete the CIRP by 25.08.2020.
- g. Pursuant to the order dated 04.08.2020, RP requested the MSME promoters to submit the revised Resolution Plan at the earliest for consideration. The promoter has submitted the plan on 10.08.2020 and the same was placed before COC for consideration in its meeting held on 17.08.2020.
- h. It is averred that the plan submitted by the promoters provides that the amount realized by way of sale of assets of the personal/corporate guarantors to the corporate debtor by the COC members i.e Andhra



Bank and IOB during the CIRP period as part of resolution plan. However, both the COC members have not agreed to the said proposal and requested the Promoters to remove the said clauses from the Resolution plan and requested the promoters to revise the plan for consideration.

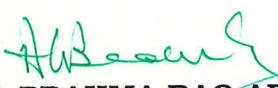
- i. Admittedly, both the COC members have realized the substantial amounts by way of sale of assets of the guarantors to the corporate debtor during the CIRP period and the same has been appropriated by them against the admitted claims. However, the said COC member have not submitted their revised claims after adjusting the appropriate amount with RP as on the date of last COC meeting.
- j. In view of the facts, CIRP could not be completed within the extended period i.e by 25.08.2020 and thereby the RP requested the COC members to recommend for extension of CIRP period by another 30 days. In this regard, resolution was passed unanimously by the COC members through e-voting conducted on 24.08.2020.
- k. It is further submitted that in the matter of **Essar Steel India Vs Satish Kumar Gupta & ors.,** with regard to Section 12 of the Code wherein the Hon'ble Apex Court Struck off the "mandatorily" word and held that while leaving the provision otherwise intact, the term "mandatorily" is struck down as being manifestly arbitrary under Article 14 of the Constitution of India and as being unreasonable restriction on the litigant's right to carry on the business under Article 19(1)(g) of the constitution. If the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCALT itself, it may be open in such cases for the





by them by sale of assets of the corporate guarantor and requested MSME promoters to remove the clauses from the Resolution plan.

6. RP further stated that he requested the financial creditors Andhra Bank and IOB to submit revised claim following realization of amount by sale of assets of the corporate debtor. In the circumstances CIRP was unable to be completed by 25.08.2020 and sought time for extension by 30 days or such number of days as the Hon'ble NCLT may at its absolute discretion deem fit.
7. A resolution was passed by the COC dated 24.08.2020. The extract of the same is quoted in the application. RP was directed to file the application for extension of CIRP by another 30 days with effect from 26.08.2020 or the days as the Tribunal may deem fit.
8. In this connection RP has relied on the decision of Apex Court in the matter of COC of "Essar Steel India Vs Satish Kumar Gupta & Ors.,".
9. RP is seeking the extension of CIRP by 30 days beyond 330 days or the time the Tribunal may deem fit.
10. This application is filed through online on 25.08.2020. Already 14 days are involved in disposal of this application from the date of filing. Therefore CIRP to be completed within 44 days with effect from 26.08.2020 i.e (14+30) days.
11. In the result application is allowed by extending CIRP by 44 days with effect from 26.08.2020 and further RP is directed to take all necessary steps for completing the CIRP within the time extended.

  
**VEERA BRAHMA RAO AREKAPUDI**  
 MEMBER (TECHNICAL)

  
**RATAKONDA MURALI**  
 MEMBER (JUDICIAL)